

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2010-03

**Joint Application of Granite Reliable Power, LLC (“GRP”) and Brookfield Power Inc.
 (“Brookfield Power”) for Approval to Transfer Equity Interests in GRP
 (“Joint Application”)**

**ORDER ON ASSENTED-TO MOTION FOR
PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

Issued January 19, 2011

Introduction

On July 15, 2009, the Site Evaluation Committee (Committee) issued a Certificate of Site and Facility with Conditions to Granite Reliable Power, LLC, (Certificate) for the siting, construction, and operation, of a wind turbine facility consisting of 33 wind turbines with a nameplate capacity of 3 MW each for a total capacity of 99 MW. The certificated facility is to be sited, constructed, and operated in the unincorporated places of Dixville, Ervings Location, Millsfield and Odell and in the incorporated Town of Dummer (Facility).

On December 3, 2010, Granite Reliable Power, LLC (GRP) and Brookfield Renewable Power Inc. (Brookfield) filed a Joint Application for Approval to Transfer the Equity Interests of Noble Environmental Power, LLC (Noble) to Brookfield under RSA 162-H (Joint Application). GRP is currently owned by Noble (75%) and Freshet Wind Energy, LLC (25%). The Joint Application seeks approval from the Committee to transfer Noble’s 75% interest in GRP to Brookfield. Such approval is required by the conditions to the Certificate and may also be required pursuant to RSA 162-H. The Committee’s authority to approve or deny the proposed transfer is set forth at RSA 162-H: 4, RSA 162-H: 5, and N.H. CODE OF ADMINISTRATIVE RULES, Site 203.

On December 17, 2010, the Committee issued an Order and Notice of Prehearing Conference and Public Hearing scheduling a prehearing conference for January 3, 2011, and the merits hearing for January 31, 2011. In addition, the Order required that all motions to intervene in this docket must be filed by January 3, 2011. On December 22, 2010, Mr. Frederick W. King, Coos County Treasurer, requested to intervene in this docket. On December 31, 2010, Ms. Lisa Linowes filed Motion to Intervene on behalf of Industrial Wind Action Group (IWAG). Both motions to intervene were granted.

On January 10, 2011, IWAG requested the Applicants to produce the following documents in preparation for a Technical Session scheduled for January 18, 2011:

- A. Updated timeline for construction of the Facility;
- B. Updated *pro forma* financial statements on the project including anticipated energy sales and Renewable Energy Credit, energy, and capital values;

- C. Purchase and Sale Agreement between Brookfield and Noble; and
- D. Power Purchase Agreement with Green Mountain Power Corporation and Central Vermont Public Service Corporation as approved by the Vermont Public Service Board.

On January 12, 2011, the Applicants filed an Assented-To Motion for Protective Order and Confidential Treatment seeking confidential treatment for the information concerning “certain trade secrets, and otherwise sensitive, proprietary, and non-public information that has been and may be requested in the course of these proceedings,” including the information contained in the above referenced documents. The Applicants assert that Counsel for the Public and IWAG assent to the relief sought.

Discussion

In Lamy v. N.H. Pub. Util. Comm’n, 152 N.H. 106 (2005), the New Hampshire Supreme Court described a three-step analysis to determine whether information is exempt from public disclosure pursuant to the Right-to-Know law, RSA 91-A: 5, IV. The first prong of the analysis is to determine if the Applicant has identified a privacy interest. If a privacy interest is invoked, then the agency must assess whether there is a public interest in disclosure. Disclosure should inform the public of the activities and conduct of the government. If disclosure does not serve that purpose, then disclosure is not required. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. See also, Union Leader Corp. v. N.H. Hous. Fin. Auth., 142 NH 540, 553 (1997) (holding that the agency must perform a balancing test to determine whether the records should be protected or if the public’s interest in disclosure is outweighed by the Applicant’s interests in protecting its confidential financial and commercial information.)

The Applicants seek confidential treatment of information contained in updated *pro forma* financials of the Project, the Purchase and Sale Agreement between Brookfield and Noble, and Power Purchase Agreements with various Vermont companies. This information is not yet within the possession of the Committee but is likely to come into the Committee’s possession during the proceedings. The information contained in *pro forma* financial statements is clearly financial information as contemplated by RSA 91-A:5, IV. In addition, it is undisputed that the agreements with Noble and the Vermont power companies contain financial and commercial information, which may be treated as confidential. Disclosure of the financial and commercial information contained in these documents will do little to inform the public of the conduct or activities of the government. Under these circumstances, the Applicant’s interest in maintaining the confidentiality of these financial records outweigh the benefits of disclosure to the public. The updated *pro forma* financial statements of the Project, the Purchase and Sale Agreement between Brookfield and Noble, and the Power Purchase Agreements with Green Mountain Power Corporation and Central Vermont Public Service Corporation as approved by the Vermont Public Service Board should they come into the possession of the Committee, will be treated as confidential documents.

However, because of his important statutory role, pursuant to RSA 162-H:9, copies of these documents shall be provided to Counsel for the Public. Counsel for the Public shall not further disclose the information without prior approval of the Committee.

The updated *pro forma* financial statements of the Project, the Purchase and Sale Agreement between Brookfield and Noble, and the Power Purchase Agreements with Green Mountain Power Corporation and Central Vermont Public Service Corporation as approved by the Vermont Public Service Board were requested by IWAG. The Applicants assert that they have no objection in providing this information to IWAG on a confidential basis provided that IWAG executes a protective agreement in the form set forth in Appendix A and forward a true copy of the protective agreement to the Applicants and the Committee. The Applicants also condition the release of the information contained in the documents referenced above to IWAG on the following terms:

[IWAG] shall not make any copies of such information or use the information for purposes other than the preparation for, and conduct of, the proceedings in this docket.

Unless otherwise ordered, . . . [IWAG] . . . shall not reference the confidential information during public proceedings in this docket or at any time in public. Upon completion of this proceeding and any resulting appeals, . . . [IWAG] . . . shall destroy any notes referencing the confidential information and return all confidential information to the Applicant[s]. Within sixty days thereafter, . . . [IWAG] shall certify to the Applicant[s] that said notes have been destroyed and all confidential information returned.

The terms of the protective agreement are reasonable. The information contained in the updated *pro forma* financials of the Project, the Purchase and Sale Agreement between Brookfield and Noble, and the Power Purchase Agreements with Green Mountain Power Corporation and Central Vermont Public Service Corporation as approved by the Vermont Public Service Board also shall be provided to IWAG subject to the conditions identified above.

The Applicants also seek confidential treatment of the updated timeline for construction of the Facility. The basis of the request for confidential treatment of the timeline is unclear. The Applicants do not specifically assert that this timeline contains any confidential information and it is unlikely that it contains any financial or otherwise private proprietary information. It is nothing more than an estimate. An Applicant for a Certificate of Site and Facility is required to set forth such a timeline in its Application. See, New Hampshire Code of Administrative Rules, Site 301.03 (f)(5), (g)(9). The nature of the information contained in the requested updated construction timeline is no different than information that is required to be filed publicly by our rules. Therefore, the Applicants' request for confidential treatment of an updated timeline for construction of the Facility is denied.

The Applicants also appear to request confidential treatment for other information that may be requested in the course of these proceedings. However, the Applicants do not identify or specify the other information, but simply request a protective order alleging that unidentified trade secrets and all otherwise sensitive, proprietary, and non-public information must be protected. The Committee cannot find that such "other" information is exempt from public disclosure on a *per se* basis. See also, Union Leader Corp. v. N.H. Hous. Fin. Auth., 142 NH 540, 553 (1997). The agency may decide that any information, including commercial and proprietary information, is confidential only after it identifies the public interests in

disclosure of such information and, if necessary, performs the balancing test assessing such interests. In the absence of specifically identified information, the public and private interests cannot be identified, the balancing test cannot be performed, and confidential treatment, therefore, cannot be granted. The Applicants' request to grant confidential treatment to unidentified documents or information based on the fact that they may contain potentially confidential information is denied.

Conclusion and Order

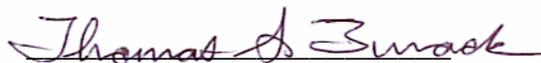
Based upon the foregoing, it is hereby:

ORDERED that the Applicant's Assented-To Motion for Protective Order and Confidential Treatment is GRANTED IN PART and LIMITED to confidential treatment of the updated *pro forma* financials on the Project including anticipated energy sales, renewable energy credits, energy, and capital values; the Purchase and Sale agreement signed between Brookfield Renewable Power Inc. and Noble Environmental Power, LLC; the Power Purchase Agreements with Green Mountain Power Corporation and Central Public Service Corporation as approved by the Vermont Public Service Board, and it is,

FURTHER ORDERED that the information sought by Counsel for the Public shall be disclosed to Counsel for the Public on a confidential basis and shall not be further disclosed without further order of the Committee, and it is,

FURTHER ORDERED that the information sought by Industrial Wind Action Group shall be disclosed to Industrial Wind Action Group upon executing a protective agreement that substantially comports with Attachment A, on a confidential basis subject to the conditions identified above and shall not be further disclosed without further order of the Committee.

January 19, 2011


Thomas S. Burack, Chairman
Site Evaluation Committee